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No. 98-518

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In The

Supreme Court of the United States

October Term, 1998

SYNATEL INSTRUMENTATION LTD.,

Petitioner,

vs.

MARK VANDELUNE and JULIE VANDELUNE, Individually and as Parents of CHELSEA VANDELUNE and TASIA VANDELUNE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Was the Eighth Circuit Court correct in holding that a foreign manufacturer may be sued in states where the manufacturer has purposefully aimed its product for distribution?

Did Plaintiffs make a prima facie case for jurisdiction?

Does Synatel have a potential claim for indemnity against the British distributor of the product?

LIST OF PARTIES

Plaintiffs are individual residents of Iowa. Mark VandeLune was injured in a grain elevator explosion and fire in Iowa on October 20, 1994. He is joined in the suit by his wife Julie and their daughters Chelsea and Tasia, who sue for loss of spousal and parental consortium.

Defendant Synatel Instrumentation Ltd. is a British corporation. Plaintiffs accept Synatel's statement in the Petition that Synatel has no parent nor wholly owned subsidiaries.

A former co-Defendant 4B Elevator Components, Ltd., was a party until the Eighth Circuit Court's ruling filed June 30, 1998. That ruling affirmed the dismissal of 4B on motion for summary judgment below. 4B is not involved in this Petition.

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World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1990) 6

STATUTES CITED:

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Section 614.1(2), Iowa Code (1997) 7

OTHER AUTHORITIES:

29 C.F.R. Section 1910.272(q)(5) 4

STATEMENT OF THE CASE

The narrow question presented by the Petition is whether the facts of this case constitute a prima facie case that the Defendant manufacturer distributed its product with knowledge that its product could end up in Iowa.

This product liability suit arose from a grain elevator dust explosion October 20, 1994, in Gowrie, Iowa. The suit is against the manufacturer of an alarm device designed to prevent grain elevator dust explosions. The particular device in question is called the M700 Speed-switch Monitor. A similar device was manufactured under the name Rotamatic by Defendant Synatel for distribution in Europe and countries other than the United States. In 1993 Synatel and 4B Elevator Components, Ltd. of Peoria, Illinois, agreed to modify the Rotamatic and distribute it within the American market as the M700. The M700 was designed to detect reduction in speed of rapidly spinning machines, such as grain elevator motors. Modifications made expressly for the American market included modifications needed to comply with United States O.H.S.A. regulations. Product development by Synatel included submission of the M700 to America's Factory Mutual Research testing laboratory in Massachusetts.

The M700 was manufactured by Synatel. It was modified from the Rotamatic by Synatel with the cooperation of 4B. Representatives of 4B traveled to Great Britain during the design phase of the M700, and representatives of Synatel traveled to Peoria to meet with 4B personnel. Manufacturing specifications were exchanged by fax. 4B is a wholly owned subsidiary of Braime Pressings, Ltd. of

Great Britain. Synatel knew the product was sold to 4B before the device was manufactured. Between 50% and 60% of Synatel's 1994 total manufactured output of these devices were shipped to Peoria, Illinois.

That these devices were targeted for the American market was admitted by Synatel's sales and marketing director. The devices left the Synatel plant with the 4B Elevator Components decals already on them, showing the address of the Peoria, Illinois, company. In the shipping boxes when the M700 devices left Synatel were instructions on installation and use by the ultimate consumers. These instructions were developed by Synatel to comply with American standards, regulations and consumer expectations.

Synatel admits manufacturing the particular M700 device involved in this case in late 1993. Braime purchased the M700 device from Synatel but only stored it for a day before the device was shipped to the United States. It was sold by 4B to an installer in Boone, Iowa, who installed it at the Gowrie, Iowa, Consolidated Cooperative in early 1994. During the pre-dawn hours of October 20, 1994, during the grain harvest, Mark VandeLune was working at the Gowrie Co-op as a truck driver. He was badly burned in an explosion caused by the ignition of grain dust near a slipping elevator belt. The explosion resulted in part from the failure of the M700 to shut down the grain elevator belt at a critically dangerous time, the very time when this device was intended to monitor and disable a malfunctioning grain elevator. An independent lab tested the Synatel alarm system after the explosion. Its experts found the device defective in 3 areas: (1) the 10% loss of motion alarm malfunctioned; (2) the 20% loss

of motion shut-down feature was designed to require affirmative action to install it, rather than being designed in a fail-safe mode; and (3) the warnings and instructions were defective.

REASONS FOR DENYING THE WRIT

A. Synatel has misstated the facts in its Petition.

Synatel has misrepresented vital facts in its Petition. The misrepresentations include the use of the words "unrelated entities" in describing the sequence whereby this device was developed and marketed in America. There was no factual dispute that 4B, an American company, worked closely with Synatel to create, test, market and distribute this device in America. The clinching fact is the 4B Elevator Components, Ltd. decal on the device as it left Synatel's plant. The consumer upon opening the box with this M700 would find it to bear only one address and company name, that of the Peoria, Illinois, distributor.[1] Synatel's plant in England welcomed 4B representatives during the market development stage of the M700 product line. The two companies exchanged visitors on several occasions. A European version of this speed-switch already existed. The modification of that device by

[1] The M700 devices also had a small round red owl decal on them, with "Made in England" written on the decal, but no identification of the Synatel company. It was learned during discovery in this case that the red owl is indeed a logo of Synatel's. However, with only the Illinois address and company name of 4B on the device, there was nothing on the M700 to inform the consumer that it was anything but a 4B product.

Synatel was triggered by the adoption of an O.S.H.A. regulation requiring elevators to install monitoring devices that would automatically shut down the elevator's grain leg when motion decreased by 20%.[2]

The misrepresentations by Synatel include the characterization of the relationship between Synatel and the American grain elevator alarm market as "fortuitous and incidental." This device was designed for the American market, labeled with a decal for Peoria, Illinois, distribution, with instructions written for American installers, all done at the Synatel plant in communication with 4B. That there was a deliberate plan to distribute this device to midwestern grain elevators from a site 80 miles from the Iowa border is undisputed,[3] yet Synatel continues to misrepresent this as "fortuitous and incidental." The misstatements in Synatel's argument can be seen in the inherent contradiction between its development of the product instructions referring to O.H.S.A. legal compliance, then arguing that Synatel did not intend to avail itself of the American laws. The purpose of this product

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[2] 29 C.F.R. Sec. 1910.272(q)(5).

[3] Discovery revealed distribution of Synatel motion sensors through distributors in St. Louis and in Boone, Iowa, only 35 miles from Gowrie where this explosion occurred. Both the St. Louis and Boone, Iowa, distributors obtained their Synatel devices from 4B Elevator Components in Peoria, Illinois. These distributors counted sales of the Synatel alarm systems "in the thousands" to grain elevator customers in Iowa and this region. In fact, the Gowrie Co-op installed 3 Synatel motion monitors in late 1992 or early 1993, then replaced one with the Synatel device involved in this case in early 1994, then replaced that with a Synatel M500A in 1995.

was to comply with American laws. Certainly Synatel cannot complain that is now subject to those laws.

In response to Synatel's claim that the facts here show "incidental and fortuitous" contacts through "independent activities of a number of unrelated entities many times removed from Synatel," Plaintiffs ask rhetorically, "What did Synatel expect to happen to this product?" First, the deal was struck with 4B and its parent Braime before the device was manufactured. There is nothing unforeseeable nor unrelated about the sale and shipment to Braime and 4B. Next, 4B sold the device to a repair man dealing in grain elevator repairs for installation in a midwestern grain elevator. Again, there is nothing unforeseeable nor unrelated about that sequence. The product ended up exactly where Synatel targeted it, in a grain elevator in the midwest. Foreseeability is not the full answer to the jurisdictional question. Rather, here there were many deliberate acts by which Synatel "purposefully availed itself" of the benefits of the forum state, a pattern of deliberate design, development, marketing and distributing thousands of motion sensor devices in the midwestern grain elevator market.

The Eighth Circuit Court correctly applied these facts to the established law. In *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610 (8th Cir. 1994), *cert. den. sub nom. Hosoya Fireworks Co. v. Barone*, 513 U.S. 948 (1994), that Court held that a manufacturer who "poured its products into regional distributors throughout the country" cannot argue that it "had no idea its products were being distributed into neighboring states." Concerning the supposed burden of litigating claims in American courts, the *Barone* court stated:

> Although a generation has not quite passed since *World-Wide Volkswagen*[4] was decided, the acceleration in the internationalization of commerce is apparent. In this age of NAFTA and GATT, one can expect further globalization of commerce, and it is only reasonable for companies that distribute allegedly defective products through regional distributors in this country to anticipate being haled into court by plaintiffs in their home states.[5]

The Eighth Circuit recognized and correctly applied this Court's decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985), that the manufacturer purposefully directed its activities at residents of the forum state, and the suit arose from those activities. Synatel specifically created this product for the American midwestern grain elevator market. Synatel cannot now complain it has been unforseeably and unfairly haled into the American midwestern courts. It does not offend the notions of "fair play and substantial justice" to hold Synatel accountable for its grain elevator monitor in the leading grain producing state in the nation. Thus the tests of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and the plurality opinion of *Asahi Metal Industry, Ltd. v. The Superior Court of California*, 480 U.S. 102 (1987) are satisfied.

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[4] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

[5] 25 F.3d at 615.

B. Plaintiffs have met their burden of making a prima facie showing of jurisdiction.

Synatel's Petition challenges the Eighth Circuit Court's application of facts as erroneous. As recognized by the Eighth Circuit Court, Plaintiffs at this stage in the proceedings have the burden only to show a prima facie case of jurisdictional facts. *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1387 (8th Cir. 1991). Facts are to be viewed in the light most favorable to the Plaintiffs. *Id.* The proof at this stage certainly shows a prima facie case.

C. Synatel cannot sustain a claim for relief for indemnity against Braime, and thus its argument about the burden of litigating a third-party claim is moot.

There are two misstatements of law in Synatel's third brief point: (1) there is immunity from suit in Iowa for mere distributors such as Braime. Section 613.18(1)(a), Iowa Code (1997), and (2) in its footnote 7, Synatel incorrectly states that the statute of limitations in Iowa is 15 years from date of installation of the product. On the second point the statute of limitations for personal injury actions in Iowa is two years. Section 614.1(2), Iowa Code (1997). On the first point, the proof is contained in the Eighth Circuit Court's ruling as to dismissed Defendant 4B. The Eighth Circuit held that Plaintiffs could not sustain a claim for relief against 4B due to a combination of lack of duty and immunity from suit as a mere distributor. *See* Appendix A, pages 2a – 7a. It is undisputed that 4B is a wholly owned subsidiary of Braime. 4B was the seller of this device. Braime did nothing more than hold

the product overnight in its warehouse before shipping it to 4B in a pre-arranged business deal. *See Bingham v. Marshall & Huschart Machinery Co.*, 485 N.W.2d 78 (Iowa 1992). Braime's involvement is entirely passive, where Synatel's is active. Indemnity might exist if the reverse were true, that is the passively negligent Braime were bringing a third-party action against the actively negligent Synatel. *Iowa Power and Light Co. v. Abild Constr. Co.*, 259 Iowa 314, 144 N.W.2d 303, 309 (1966). There is no common basis for liability to support a claim for contribution or indemnity from Braime. *Allied Mutual Ins. Co. v. State*, 473 N.W.2d 24, 27 (Iowa 1991); *Rees v. Dallas County*, 372 N.W.2d 503 (Iowa 1985). Synatel cannot succeed on a claim for indemnity due to Braime's special defense as a mere distributor under Section 613.18(1)(a), Iowa Code (1997). *Iowa Power and Light v. Abild Constr. Co., supra*, at 310.

CONCLUSION

The Eighth Circuit has correctly applied the facts of this case to the established law. Jurisdiction over Synatel does not offend the notion of fair play. Synatel's Petition should be denied.

Dated October 26, 1998

Respectfully submitted,

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